

Docket No. 2024429-7005182001

CERTIFICATE OF TRANSMISSION UNDER 37 CFR § 1.6

I, hereby certify that this paper and all enclosures are being sent via facsimile under 37 CFR § 1.6 on July 16, 2003.


Signature of Person Transmitting Facsimile

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Pedersen et al.

Assignee: GN ReSound AS

Filing Date: September 20, 2001

Examiner: Unknown

Serial No.: 09/960,018

Group Art Unit: 2644

Title: **HEARING AID WITH ADAPTIVE MICROPHONE MATCHING**

Commissioner for Patents

Washington, D.C. 20231

PETITION TO REVIVE ABANDONED APPLICATION UNDER 37CFR 1.137(a)

Applicants request the revival of the above-identified application under 37 CFR 1.137(a). The application was held abandoned for failure to prosecute. Applicants submit that the delay in reply was unavoidable.

This Petition is accompanied by:

- (1) A reply in the form of a Response to the Notice to File Corrected Application Papers. This reply is the reply originally submitted on December 21, 2001.
- (2) The petition fee set forth in 37 CFR 1.17(l).
- (3) A terminal disclaimer does not accompany this Petition as 37 CFR 1.137(d) states that such disclaimer is required if the application in question is a utility application filed before June 8, 1995. The present application was filed on September 20, 2001.
- (4) A showing in the form of a statement of facts, provided below, that the delay in filing a response to the outstanding Office Action was unavoidable.

1. I am an attorney duly admitted to practice law in the state of California and a partner in the law firm of Bingham McCutchen LLP, previously McCutchen Doyle Brown and Enersen LLP, attorneys for the Applicants in the above-identified matter.

2. A Notice to File Corrected Application Papers was mailed on October 22, 2001 to the previous Attorneys of Record (Flehr, Hohbach, Test, Albritton & Herbert). A copy of the notice is attached.

3. A Response to the Notice to File Corrected Application Papers was mailed on December 21, 2001 by the previous Attorneys of Record. A copy of the response is attached along with a copy of the postcard that accompanied the response. The first page of the response includes a Certificate of Mailing signed by a Ms. Gail Diehl and dated December 21, 2001.

4. Applicants note that the file, as transferred to our firm from the previous attorneys of record, does not include a dated, returned postcard to verify that the response was filed as certified by Ms. Diehl.

5. Applicants submit that the confusion and the postal problems that followed the September 11, 2001 tragedy and the ensuing anthrax scare are the reason for the PTO never receiving the Response to the Notice to File Corrected Application Papers and/or the previous attorneys of record never receiving a return postcard.

6. Applicants note that the previous attorneys of record filed an IDS on February 21, 2002, a copy of which is enclosed, implying that they must have believed that their Response had been received and that the application was pending.

7. On January 3, 2003, after receiving the application file from the previous attorneys of record, a Revocation and New Power of Attorney was sent to the assignee of the present application for execution.

8. The present attorneys of record filed a Revocation and New Power of Attorney on March 13, 2003.

9. A Notice accepting the Power of Attorney filed on March 13, 2003 was mailed March 31, 2003.

10. A Notice of Abandonment was never received in this application.

11. The undersigned received a courtesy telephone call today, July 16, 2003, from Examiner McDowell indicating that the present application had been abandoned for not filing a timely response to the Notice to File Corrected Application Papers. Examiner McDowell had noticed that the application had been transferred to Bingham McCutchen from Flehr Hohbach and that a New Power of Attorney had recently been filed. Examiner McDowell was calling to insure that the applicants were aware that the application had been abandoned.

Docket No. 2024429-700518200

In view of the fact that a Response to the Notice to File Corrected Application Papers was timely filed, and given the likelihood that either the PTO never received the Response to the Notice to File Corrected Application Papers or the previous attorneys of record never received a return postcard from the USPTO due to the September 11, 2001 tragedy and the ensuing anthrax scare, Applicants request the withdrawal of the Abandonment of the above-identified application.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: 7/16/03 Respectfully submitted,

By: 

David G. Beck

Registration No.: 37,776

Bingham McCutchen LLP
Three Embarcadero Center, Suite 1800
San Francisco, California 94111
Telephone: (415) 393-2000 Telefax: (415) 393-2286